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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,839	10/22/2001	Glen J. Anderson	P1840US00	5510

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EXAMINER	
STRANGE, AARON N	
ART UNIT	**PAPER NUMBER**
2153	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/041,839	ANDERSON, GLEN J.	
	Examiner	Art Unit	
	Aaron Strange	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10222001*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10,14,22,23,25, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 10,22, and 34 recite the limitation "the initial location" in lines 5-6,2, and 6, respectively, of each claim. There is insufficient antecedent basis for this limitation in the claims.

4. With regard to claim 10, the limitation "wherein the first user moves from a first location in which the content is accessible to a second location wherein the output content is not accessible" renders the claim unclear. If the content is not accessible, it is unclear how it may be output at the second location, as claimed.

5. The term "preponderance" in claim 14 is a relative term which renders the claim indefinite. The term "preponderance" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how

many of the user profiles must have the common characteristic in order for "a preponderance" of the profiles to have that characteristic. The Examiner recommends that the claim be amended to recite "majority" or another term that clearly defines how many profiles must contain the characteristic.

6. With regard to claim 22, the limitation "outputting the content output at the initial location" is unclear. Claim 21, from which claim 22 depends states that the content is not accessible at the second location, so it is unclear how it may be output.

7. With regard to claim 23, the limitation "for an available device to output the content at the second location" is unclear. Claim 21, from which claim 23 depends, states that the content is not accessible at the second location, so it is unclear how it may be output.

8. Claim 25 recites the limitation "the location" in lines 2. There is insufficient antecedent basis for this limitation in the claim. It is unclear if Applicant is referring to the first location or the second location.

9. With regard to claim 25, the limitation "at least one other device" is unclear. No devices appear in claims 21 or 13, from which claim 25 depend, so it is unclear how there may be at least one other device.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-8, 13-19, and 26-31 are rejected under 35 U.S.C. 102(e) as being anticipated by McCarthy et al. (US 6,498,955).

12. With regard to claim 1, McCarthy discloses a method for providing content, comprising: identifying a first user profile corresponding to a first user and a second user profile corresponding to a second user (each user has a profile)(Col 22, Line 61 to Col 23, Line 7), the user profiles containing at least one content characteristic for a respective user (musical preference)(Col 22, Lines 65-66); determining at least one content characteristic common to at least the first user and the second user based on the first user profile and the second user profile (most preferred musical genres)(Col 23, Lines 18-27); and outputting content including the determined common characteristic to the first user and the second user (play preferred station)(Col 23, Lines 40-52).

13. With regard to claim 2, McCarthy further discloses detecting a presence of at least one of the first user and the second user in a location (users log-in) (Col 23, Lines 12-17).

14. With regard to claim 3, McCarthy further discloses identifying a third user profile corresponding to a third user (multiple users may be present)(Col 22, Line 61 to Col 23, Line 7) and outputting content including the determined common characteristic to the third user (Col 23, Lines 4-52).

15. With regard to claim 4, McCarthy further discloses that the identified user profiles are at least one of: stored in a centralized database (Col 22, Line 61 to Col 23, Line 7) and received from the users (Col 22, Lines 65-66).

16. With regard to claim 5, McCarthy further discloses that the content characteristic includes at least one of: style of content (preferred musical genre)(Col 22, Lines 65-66), content author and content performer.

17. With regard to claim 6, McCarthy further discloses that the content characteristic includes at least one of: output mode of content (musical genre) (Col 3, Lines 61-67 and Col 22, Lines 65-66) and content playing device.

18. With regard to claim 7, McCarthy further discloses that the content includes at least one of: audio data suitable for being output to a user (Col 22, Lines 55-57); visual data including at least one of graphics, pictures and surface covering appearance; aroma; ambiance lighting; temperature; and airflow.

19. With regard to claim 8, McCarthy further discloses establishing a time including at least one of time of day (90 minutes after member entered)(Col 24, Lines 32-39), time of week, time of month and time of year, wherein the established time is utilized in conjunction with the user profile for determining a common content characteristic.

20. With regard to claims 13 and 26, McCarthy discloses a system and method for providing content based on user preferences, comprising: detecting a plurality of users at a location (users log-in) (Col 23, Lines 12-17); identifying user profiles corresponding to at least a portion of the plurality of users (each user has a profile)(Col 22, Line 61 to Col 23, Line 7); determining at least one content characteristic common to the identified user profiles (most preferred musical genres)(Col 23, Lines 18-27); and outputting content including the determined common characteristic at the location (play preferred station)(Col 23, Lines 40-52).

21. With regard to claim 14, McCarthy further discloses that determining includes determining if the content characteristic is common to a preponderance of the identified user profiles (all profiles are considered) (Col 23, Lines 18-27).

22. Claims 15-19 are rejected for the reasons cited above for claims 4-8, since they recite substantially identical subject matter.

23. Claims 27-31 are rejected for the reasons cited above for claims 4-8, since they recite substantially identical subject matter.

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

25. Claims 9,11,20,24, 32, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yashushi et al. (US 6,084,516).

26. With regard to claim 9, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose establishing an orientation of the first user and the second user with regards to a first device and a second device wherein the orientation is utilized to determine at least one

characteristic common to users oriented with regard to at least one of the first device and the second device.

Yasushi teaches a method of establishing an orientation of the first user and the second user (residents in the room) with regards to a first device and a second device (loudspeakers) (Col 4, Line 59 to Col 5, Line 14), wherein the orientation is utilized to determine at least one characteristic (preferred volume) common to users oriented with regard to at least one of the first device and the second device. The volume of each loudspeaker is then adjusted so that each resident hears the signal easily and well-balanced. This would have been an advantageous addition to the system disclosed by McCarthy since the volume of speakers in the fitness center could be adjusted based on the proximity of people to them.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine an orientation of users in the system disclosed by McCarthy, and adjust the volume of the music as appropriate.

27. With regard to claim 11, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), including determining at least one content characteristic common to a preponderance of the additional users and the first user (member entrance triggers recalculation) (Col 22, Lines 16-21), it fails to disclose that when the first user moves from a first location in which the output content is accessible to a second location wherein the output content is not accessible determining if additional users are present at the second location, wherein if users are

present at the second location and the first user is at the second location past a threshold time, determining the least one content characteristic common to a preponderance of the additional users and the first user.

Yasushi discloses a system where when the first user moves from a first location in which the output content is accessible to a second location wherein the output content is not accessible (resident B enters a room with resident A already in it) (Col 12, Lines 30-35) determining if additional users are present at the second location (Determine location of resident A) (Col 12, Lines 30-35). Yasushi further discloses that if users are present at the second location, the common audio source is selected and output (switch to common audio source) (Col 12, Lines 41-48).

While McCarthy fails to specifically disclose determining the common characteristics only after a threshold time since the system opted to change the music as soon as the new user is detected, McCarthy does disclose that waiting a threshold time would be an advantageous addition to the system. McCarthy discloses that a large number of users complained about the system switching stations in the middle of songs. (McCarthy, Col 26, Lines 46-50). It would have been advantageous to wait until a user has been at the second location until the end of the current song before considering their preferences to eliminate this problem

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to wait for a first user to be at a second location for a threshold period before considering their preferences along with the group of people

already present at the second location. This would prevent a user from entering a room and causing the station to switch in the middle of a song because of their preferences.

28. Claims 20, 32, and 33 are rejected for the reasons cited above for claim 9, since they recite substantially identical subject matter.

29. Claims 24, and 35 are rejected for the reasons cited above for claim 11, since they recite substantially identical subject matter

30. Claims 10, 21-23, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Bharat et al.

31. With regard to claim 10, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose that when the first user moves from a first location in which the output content is accessible to a second location wherein the output content is not accessible, determining if additional users are present at the second location, wherein if users are not present at the second location, outputting the content output at the initial location.

Bharat teaches a method of migrating an application from one location to another, and resuming operation where it left off. This allows a continuous experience with the application to be maintained by the user (Section 1). This would have been an advantageous addition to the system disclosed by McCarthy since it would have

allowed the content being presented to a user at the first location to be resume presentation to the user at the second location, in the event that other users are not present. For example, this would allow users to finish the program they were listening to at the second location, which would be especially advantageous for talk and news type programs.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to continue presenting the content that was presented a first location when a user moves to a second location that does not have additional users. This would have allowed the user to finish receiving the content they were listening to upon reaching the second location.

32. Claims 21-23 and 34 are rejected for the reasons cited above for claim 10, since they recite substantially identical subject matter.

33. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Sainton et al. (US 5,854,985).

34. With regard to claim 12, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose generating a user profile for a third user, the third user not having a user profile, wherein the user profile is generated by at least one of general demographic information of users present and based on past users encountered.

Sainton teaches generating a default user profile based on the preferences of a large number of users that have been previously encountered (Col 17, Lines 49-57). The users may then update their profile at a later time to reflect their personal preferences. This would have been an advantageous addition to the system disclosed by McCarthy since it would have given new users a default profile that corresponds substantially to the preferences of the group. Therefore, this user would not have a substantial impact on the choice of music played when he or she is present.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to generate a default user profile for a new user based on past users encountered since it would not substantially impact the choice of music by the system until the user updated their profile with their personal preferences.

35. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Bharat et al. in further view of Yashushi et al. (US 6,084,516).

36. With regard to claim 25, while the system disclosed by McCarthy in view of Bharat shows substantial features of the claimed invention (discussed above), it fails to disclose that a conflict with content output by at least one other device at the location is resolved.

Yasushi discloses a system wherein when a person enters a room that contains

one other person who is listening to music, the audio source is switched from the individual signal of the person already in the room to the common signal. (Col 12, Lines 30-48). This allows both people to listen to the common audio source rather than outputting both individuals preferred source.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to switch from an individual audio source to a common audio source when a plurality of people are in the room. This prevents multiple individual sources from being played simultaneously, improving theoverall listening experience for everyone.

Conclusion

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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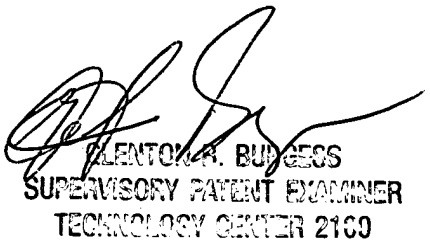

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